IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.13085 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW AGE OIL INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for MR NK MAJMUDAR for Petitioner Nos.1-4

MR NAGESH SOOD, AGP for Respondent Nos. 1,5

MR RM CHHAYA for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3-4,6

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of Order: ___/07/2004

CAV JUDGEMENT

1. What is challenged in the present petition is the order passed by the respondent No.1 - appellant authority i.e. State of Gujarat dated 06-08-2003 dismissing the Appeal No.2 of 2003 preferred by the present petitioners and confirming the order dated 03-03-2003 passed by the Collector, Mehsana in T.P. Case No.6 of 2002 by which the development permission granted by the Mehsana Area Development Authority allowing the petitioners to construct shopping center in the Gujarat Industrial

Development Corporation, Mehsana has been cancelled and directed the petitioners to restore the position of the land in question.

2. Few facts are necessary for determination of the present petition.

2.1 The Gujarat Industrial Development Corporation ('the GIDC' for short) has acquired the land as per the Government Resolution dated 22-11-1962. As per the said resolution, the said land cannot be transferred, sold or alienated to any one without prior permission from the revenue department. The land was acquired by the GIDC for the industrial purpose. However, for ancillary purpose the GIDC can use and/or allow to use the land for the purpose of construction of bank, hospital, post office, retail shops, etc. For that some land can be used by the GIDC for commercial purpose i.e. for ancillary use only. The GIDC cannot as such allow the plot holders to use the land for the purpose of construction of shopping center and/or for commercial use and to sale it to outsider i.e. for the use of even other than the allottees. The GIDC, Mehsana is within the limits of Mehsana Area Development Authority respondent No.3 declared as the Area Development Authority under the provisions of the Gujarat Town Planning Act. As per the G.D.C.R. and under the Town Planning Scheme the GIDC is in industrial zone.

2.2 It seems that petitioner No.1 - New Age Oil Industries was allotted the land bearing Plot Nos.82 and 83 in GIDC, Mehsana in the year 1975 for 99 years. By order dated 13-03-1979 the Executive Engineer, GIDC approved the plans submitted by the petitioners for construction of factory shed. Thereafter, the petitioners approached respondent No.3 - Area Development Authority and sought development permission / Raja Chitthi for construction of shopping center i.e. 64 shops in the plot bearing Nos.82/2 + 85/10, 82/2 + 85/11, 82/2 + 85/12 and 82/2 + 85/13. On 01-05-2002, respondent No.3 - Area Development Authority granted development permission / Raja Chitthi to the petitioners for construction of shopping center i.e. for construction of 64 shops on the condition that before starting the construction, No Objection Certificate (NOC) is to be obtained from GIDC and State of Gujarat.

2.3 Respondent No.6, who was the Councillor of the Mehsana Nagarpalika, approached the Collector, Mehsana for quashing and setting aside the resolution dated 24-04-2002 of the Town Planning Committee of Mehsana

Nagarpalika and also the development permission dated 01-05-2002, by which development permission was granted in favour of the petitioner for construction of shopping center in GIDC area, alleging inter alia that without verifying even the ownership and without making any proper inquiry the development permission has been granted by the members of the committee for personal benefit.

2.4 As per Section 6B(1) of the newly amended Gujarat Town Planning Planning and Urban Development (Amendment) Act, 1976 (hereinafter referred to as 'the Act'), a copy of every order, resolution or decision of the appropriate authority is required to be sent to the Collector of the district. As per Section 6B(2) of the Act, if in the opinion of the Collector, the execution of any order, resolution or decision of an appropriate authority or the doing of anything which is about to be done or is being done by or and on behalf of an appropriate authority is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of an appropriate authority is already commenced or completed, direct an appropriate authority to restore the position in which it was before the commencement of such work. Against the order passed by the Collector under Section 6B(2) of the Act, an appeal provides before the State Government.

2.5 Thus, by exercising powers under Section 6B(2) of the Act, the Collector, Mehsana issued a show-cause notice dated 03-09-2002 directing the petitioner to show cause why the resolution and the development permission granted by the Area Development Authority, Mehsana should not be suspended permanently for the reasons stated in the show-cause notice such as :

(i) Before granting the permission the particulars from the Office of the City Survey Records and/or Revenue Department is not considered;

(ii) Final Plot which is allotted under the Town Planning Scheme is in whose name, in which zone and for which purpose has not been considered;

(iii) When the land was allotted to the GIDC for the public purpose, the same can be

used only for the purpose for which it was acquired / allotted and it cannot be used for any other purpose and the same is applicable to the plot holders also;

(iv) Before putting up the construction the development permission was required to be obtained. However, in the present case, after initiation of construction, the development permission is sought;

(v) The land in question is in the industrial zone as per the GDCR of Mehsana Urban Development Authority and as per the GDCR shopping complex cannot be constructed.

2.6 There was a stay granted by the Collector for staying further implementation and operation of the development permission and to treat it as if development permission has not granted and to restore the position of land in question and directed the petitioners and its partners not to transfer and/or alienate the property in question in any manner whatsoever. Hearing of the said show-cause notice was fixed on 17-09-2002. The petitioners appeared before the Collector, Mehsana and filed an application on 17-09-2002 for vacating the stay order and filed a detailed reply to the show-cause notice on 16-01-2003 contending inter alia that the development permission which was granted by the Area Development Authority is just and proper and in accordance with law as the plot in question is within the GIDC area, the rules of GIDC are applicable and as such they are not required to obtain any permission for construction of shopping centre from the Area Development Authority, still they have obtained development permission from Area Development Authority. It was also contended on behalf of the petitioners that the Town Planning Committee after considering all the aspects had granted the development permission. It was also contended on behalf of the petitioners that even GIDC can permit the land / plot for commercial use such as bank, hospital, post office, retail shops, etc. It was also contended on behalf of the petitioners with regard to the allegations in the show-cause notice that before starting the construction the development permission was not obtained, that in fact they are not required to obtain any development permission as the plot in question is within the GIDC area and not within the area of Town Planning Scheme i.e. Area Development Authority and, therefore, requested to vacate the interim relief and show-cause notice.

2.7 After considering the reply submitted on behalf of the parties and after giving an opportunity of being heard to all the parties i.e. the petitioner, regional manager, Area Development Authority and the Councillor the Collector, Mehsana by its order dated 28-02-2003/03-03-2003 cancelled the development permission granted by the Area Development Authority on 01-05-2002 as well as the resolution of the Town Planning Committee, Mehsana being resolution No.14/15 dated 24-04-2002, by which the plans for constructing shopping centre was sanctioned and further directed the Area Development Authority, GIDC and the petitioners to restore the position of the land to its original position within a period of 21 days. It was held by the Collector, Mehsana that the resolution passed by the Town Planning Committee for granting development permission and sanctioning the plans submitted by the petitioners for construction of shopping centre and also the development permission granted by the Area Development Authority are absolutely illegal. It was held by the Collector that the plot in question is in the industrial zone and as per the GDCR of Area Development Authority, construction for commercial use / shopping centre is not permissible. It was held that the land in question was allotted to the GIDC for industrial purpose and it can be used by the GIDC and its allottees only for the industrial use and even it cannot be transferred to any other person without prior permission of the revenue department. It was also held that the plot in question can be used for industrial purpose and/or its ancillary purpose. It was held that before granting the development permission the authority has not considered the ownership of the plot in question and the zone under the Town Planning Scheme. It was also held that even the NOC of the GIDC was not obtained and even the development permission which was granted by the Area Development Authority subject to NOC by the GIDC and it was to be obtained prior to commencing the construction work. It is pertinent to note that in spite of the stay order granted by the Collector, Mehsana on 03-09-2002 in between the petitioner approached the GIDC for regularizing the construction which was made in the plot No.82/2 and 85 and with utmost surprise the GIDC by its order dated 13-01-2003, in spite of the stay order, regularized the construction made by the petitioners in Plot Nos.82/2 and 85. Be that it may, the Collector, by its order dated 03-03-2003 quashed and set aside the Resolution No.14/15 dated 24-04-2002 of the Town Planning Committee, Mehsana Area Development Authority and also the development permission dated 01-05-2002 granted by the Mehsana Area Development Authority and directed the

petitioner, Area Development Authority and GIDC to restore the position of the land in question as it was prior to granting of the development permission.

3. Being aggrieved and dissatisfied with the order passed by the Collector, Mehsana dated 03-03-2003 in T.P. Case No.6 of 2002, the petitioners preferred an appeal under Section 6B(4) of the Act before the State Government. The State Government i.e. appellate authority by its judgment and order dated 06-08-2003 dismissed the said appeal and confirmed the order dated 28-02-2003/03-03-2003 passed by the Collector by a detailed speaking order and has further held that even the construction which is made by the petitioner is not in accordance with the GDCR and though the permission was granted for construction of 64 shops, the petitioners have constructed 102 shops. It was also held by the appellate authority that the plot in question can be used by the industrial purpose and even as per the GIDC Act the plot in question can be used for the commercial purpose ancillary to the industrial use and shopping complex is not permissible. As per GDCR of the Mehsana Area Development it is in industrial zone and the plot in question cannot be used for commercial purpose and construction of shopping centre which ultimately has to be transferred to various persons and is not to be used for the allottee only. For all and other reasons the appellate authority dismissed the appeal and confirmed the order passed by the Collector, Mehsana dated 28-02-2003/03-03-2003. Therefore, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

4. Mr.Y.N.Oza, learned Senior Advocate for Mr.N.K.Majmudar, learned advocate for the petitioners, has challenged the aforesaid order mainly on the following grounds :

(i) As the plot in question is in the GIDC, the petitioners are not required to obtain any permission / development permission for the purpose of construction of shopping centre from Area Development Authority;

(ii) The Rules & Regulations and GDCR of Area Development Authority are not applicable to the land in question;

(iii) Even otherwise the development permission has been granted by the Area Development

Authority for construction of shopping centre which is just and proper and in accordance with law;

(iv) That subsequently by order dated 13-01-2003 the GIDC has regularized the construction which is made by the petitioners in the plot in question. Therefore, it was not open for the Collector to go beyond the said order of regularization as the construction in question was regularized by the GIDC as per the policy of the State Government and GIDC and it has a statutory effect and the Collector could not have directed to remove the construction and could not have directed to restore the position of the land which was prior to granting of development permission;

(v) That they have already transferred the shops to various other persons and, therefore, also the Collector also should not have set aside the development permission;

(vi) The Collector has no jurisdiction to initiate the proceedings at the instance of respondent No.4 - Councillor;

(vii) In view of the State Government's policy to regularize commercial construction in GIDC, the Collector could not have cancelled the development permission on the ground that the construction of shopping centre is in the industrial zone.

5. In support of the aforesaid contentions, Mr.Y.N.Oza has relied upon the order passed by the GIDC dated 13-01-2003 (Annexure-F to the petition) and various resolutions of the State Government and GIDC to support his contentions that it is a policy of the State Government and GIDC to regularize the construction which is used for commercial purpose.

6. Mr.Nagesh Sood, learned A.G.P appearing on behalf of respondent Nos.1 and 5, has supported the order passed by the Collector as well as the appellate authority. He has emphasized that in view of the fact that the development permission granted by the Area Development Authority was contrary to the GDCR of Area Development

Authority, it has rightly been quashed and set aside by the Collector. He has also submitted that the plot in question is in the industrial zone even as per the GDCR of Area Development Authority and, therefore, the construction of shopping centre i.e. for commercial use is not permissible at all. He has also submitted that by granting development permission the Area Development Authority has not considered the ownership of the plot in question. He has further submitted that so for as the regularization of construction by GIDC is concerned, as such in view of the stay order granted by the Collector, the GIDC ought not have and should not have regularized the construction as the development permission was also stayed. This shows the mala fide intention on the part of the petitioner as well as the GIDC and it speaks many things. He has also submitted that even as per the order dated 13-01-2003 regularizing the construction which is put up by the petitioners in the plot in question, as per Condition No.1 it is subject to the Rules and Regulations and GDCR of the Area Development Authority. Therefore, it is submitted by him that even the regularization of the construction by the GIDC by order dated 13-01-2003 is subject to the Rules & Regulations of the Area Development Authority and there is no blanket regularization granted in favour of the petitioners. He has further submitted that so far as the emphasis on behalf of the petitioners to the policy of the State Government and GIDC for regularization of the construction / commercial use is concerned, even as per the said policy, they are also subject to the building regularization and bye-laws of GDCR of respective Area Development Authority. He has also further submitted that the regularization by the State Government and GDCR is not with regard to the construction but it is with regard to use. It is also further submitted by him that GIDC can permit the use for commercial purpose but that too if it is for ancillary purpose such as bank, hospital, post office, retail shops, etc. but that too it can be used only by the allottee only and no further transfer by the allottee is permissible. In view of the aforesaid facts, he has submitted that the petition may be rejected with costs.

7. Mr.R.M.Chayya, learned advocate appearing on behalf of respondent No.2 - GIDC, has in fact acted very fairly. He has submitted that the policy of the State Government and GIDC for regularization of construction is subject to the observations of rules and regulations of construction and GDCR of respective Area Development Authority. For that purpose, he has relied upon condition No.1 of the order dated 13-01-2003 by which the

construction in the plot in question was regularized. He has also relied upon Condition No.4 of the order dated 13-01-2003 in which it is specifically stated that the allottee is required to obtain appropriate permission from the Area Development Authority. He has also relied upon Condition No.6 of the policy which is relied upon by the petitioner in which it is specifically stated that the said policy of regularization will not be applicable to the plots situated in GIDC which are within the jurisdiction of Area Development Authority and for that purpose they are subject to the Rules and Regulations of the concerned Area Development Authority. He has further submitted that the regularization order dated 13-01-2003 is subject to the Rules and Regulations framed by the Area Development Authority and GDCR of ADA and it is not a blanket regularization order granted in favour of the petitioner.

8. Heard the learned advocates appearing on behalf of the respective parties.

9. The land was acquired by the GIDC for industrial purpose. It was allotted to the petitioners for using it for industrial purpose. The GIDC is within the limits of Mehsana Area Development Authority. As per the Town Planning Scheme the plot in question and GIDC is in the industrial zone. Under the circumstances, the plots are required to be used by GIDC and its allottees only for industrial purpose. The commercial use ancillary to industrial purpose is permissible to allottees and GIDC such as hospital, post office, banks, retail shops, etc. However, the plot in question can not be used for construction of shopping centre that too after construction of shopping centre when the shops are to be transferred to various other persons who are not allottees of the plot in question. The petitioners are the allottees of plot Nos.82 and 83 as such they are not the owners but it is allotted to them on lease basis for 99 years. Even as per the GIDC, plot in question is required to be use for industrial purpose. However, it can be used for commercial purpose ancillary to industrial purpose as stated above. Under the circumstances, when the plot in question was in the industrial zone as per the GDCR of Mehsana Area Development Authority the construction of shopping centre and to use it for shopping centre i.e. for commercial purpose is not permissible under the Rules and Regulations, bye-laws and GDCR of Area Development Authority. Under the circumstances, the Area Development Authority could not have granted the development permission for construction of shopping centre in the

plot in question. Even while granting the development permission the Area Development Authority has also not considered the ownership of the plot in question. The contention of the petitioners that they are not required to obtain any development permission from Area Development Authority as they are in GIDC is devoid of merits. The plot in question is within the limits of Area Development Authority. Even it is the contention on behalf of the GIDC is that they are required to obtain necessary, appropriate permission from the Area Development Authority and they are required to get the plans sanctioned and obtain necessary permission from Area Development Authority. Even in the circlers issued by the State Government and GIDC for the purpose of regularization of construction or use, it is specifically mentioned that as such the said policy would not be applicable to the plots which are in the area of Area Development Authority and for that purpose they are required to obtain necessary permission and/or get it regularized as per the Rules & Regulations of Area Development Authority. As stated above when as per the GDCR of Area Development Authority the plot in question is situated in industrial zone the development permission for construction of shopping centre could not have been granted by Area Development Authority. Constructing of shopping centre cannot be said to be the commercial use to the ancillary purpose of industrial use. It is permissible by the allottee and/or GIDC to construct hospital, bank, post office, retail ships etc. but to construct the shopping centre and, thereafter to sell it to various persons who are not the allottees is not permissible. Under the circumstances, the contention on behalf of the petitioner that they are not required to obtain any development permission for construction of shopping centre from the Area Development Authority has no substance whatsoever. Both the authorities below have come to the conclusion that the GDCR of Area Development Authority is applicable so far as plot in question is concerned. The plot in question is in industrial zone, permission could not have been granted by the Area Development Authority for construction of shopping centre i.e. for commercial use and that before granting the development permission proper verification was not done by the development authority.

10. Reliance was placed by the petitioners on the order passed by the GIDC dated 13-01-2003 for regularizing the construction of the plot in question is concerned. In view of the stay order granted by the Collector on 03-09-2002 staying the development permission, the petitioners could not have approached the

GIDC for regularizing of the construction and the GIDC could not have and should not have regularized the construction. By this, the petitioners and GIDC had tried to overreach the process. Even otherwise as stated above, even the said order dated 13-01-2003 will not be in any way helpful to the petitioners as even the said regularization was subject to obtaining necessary permission from the Area Development Authority and they are subject to the GDCR of Area Development Authority and it is not a blanket regularization granted by GIDC. Under the circumstances, as per the GDCR of Area Development Authority, the plot in question is in industrial zone and it can be used only for industrial purpose and could not have been used for commercial purpose and the plot in question could not be used for constructing of shopping centre, which is ultimately transferred to various allottees.

11. So far as the contention of the petitioners that it is a policy of the State Government and GIDC to regularize the construction which is used for commercial purpose and, therefore, the Collector could not have gone beyond the policy of the State Government and could not have directed to put the position of the land which was prior to granting of the development permission is concerned, even the said policy is not applicable to the petitioners' case. Firstly, on the ground that the regularization is with regard to the use and not for the construction, secondly, even the regularization is subject to the Rules & Regulations of the Area Development Authority and GDCR of Area Development Authority. The regularization even as per the State Government Policy and GIDC policy cannot be de hors the Rules and Regulations and bye-laws of Area Development Authority and GDCR of Area Development Authority. In the present case, even the use of the plot in question i.e. for commercial use is not only by the petitioners only, but it will be by other persons who will be allotted the shops who are not even allottees of GIDC. As stated above the construction of shopping centre and use it for shopping centre cannot be said to ancillary to the industrial purpose. Under the circumstances, the contention on behalf of the petitioners that considering the policy of State Government and GIDC with regard to the construction has no substance whatsoever.

12. It was also argued on behalf of the petitioners that they have already put up the construction of shops and the shops are already sold to various persons. As observed by all the authorities below the petitioners had started the construction of shopping centre even before

applying for the development permission for construction of shopping centre and no particulars are given by the petitioners when they have sold shops in question to other persons. The development permission was granted on 01-05-2002 and since September 2002 there was a stay order. Not only that but even as per the development permission the petitioners were granted permission to construct 64 shops only and as such the petitioners have constructed 102 shops and even the construction which is put up by the petitioners in the shopping centre is not only de hors and contrary to the GDCR of Area Development Authority but is also contrary to the sanctioned development permission and the plans. Under the circumstances, both the authorities below were justified in directing the petitioners, GIDC and Area Development Authority to restore the position of the land which was existing before the commencement of such work. Under provisions of Section 6B(2) of the amended Gujarat Town Planning Act, the Collector is empowered to direct an appropriate authority to restore the position in which it was before the commencement of such work when the execution of any work in pursuance of the order or resolution of an appropriate authority is already commenced and completed. Under the circumstances, when it was found by the Collector exercising power under Section 6B(2) of the amended Act that the resolution and the development permission granted by the appropriate authority was unlawful, de hors and contrary to the GDCR and Area Development Authority and that when it was found that as the plot in question is in industrial zone and it was required to be used by GIDC and its allottees only for the purpose of industrial use and could not have been used for commercial purpose and accordingly a direction was issued by the Collector directing the appropriate authority, the petitioners and the GIDC to restore the position. I find that there is no illegality committed by the Collector. As stated above, as such, the petitioners have not come with clean hands. The petitioners had tried to overreach the Court process. When the stay order passed by the Collector in the month of 2002 in the proceedings under Section 6B(2) the petitioners could not have approached the GIDC for regularization of construction and even the GIDC could not have regularized construction. Not only that but as found by both the authorities below even the construction which is made by the petitioners is not even as per the sanctioned plans / development permission, as against 64 shops 102 shops are constructed by the petitioners. No particulars are given by the petitioners when the shops were sold to various other persons and only the bare statement is made without there being any further

evidence with regard to selling the shops to various other persons. However, when it was found by both the authorities below that the development permission which was granted by the Area Development Authority and that the resolution passed by the Area Development Authority is unlawful and contrary to the GDCR and Area Development Authority by which the commercial use in a industrial zone i.e. more particularly the construction of shopping centre in GIDC is not permissible at all it cannot be said that the orders passed by both the authorities in any way found to be illegal, unjust and contrary of law. It seems that the order passed by the Collector is in consonance with the provisions of Section 6B(2) of the newly amended Gujarat Town Planning Act. Under the circumstances, there is no substance whatsoever in the present petition.

13. For the reasons stated above, the petition is required to be dismissed and is, accordingly, dismissed. Notice discharged. Ad-interim relief stands vacated.

Sd/-

[M.R.SHAH, J]

At this stage, learned advocate appearing on behalf of the petitioner requests to continue the ad-interim relief granted earlier. In view of the fact that apart from the fact that the construction which is put up by the petitioners is de hors the GDCR of Area Development Authority, but looking to the fact that the permission which is now cancelled was for 64 shops only and the petitioner has constructed 102 shops, and looking to the conduct of the petitioner that inspite of the interim / stay order granted by the Collector, the petitioner had tried to overreach the process and have approached the GIDC and got the order of regularisation, the prayer for extension of the ad-interim relief is rejected.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'